
ADiM BLOG

July 2021

ANALYSES & OPINIONS

*An unsettling sense of déjà-vu:
The May 2021 Ceuta events and their precedents*

Jean-Pierre Cassarino

College of Europe, Warsaw Campus

Abstract

This article shows that years of legal disputes opposing the Council of the European Union with the Polisario Front have shed light on the European Union's paradoxical position on the conflict in Western Sahara where economic and geopolitical interests prevail over the application of European and international law. Such legal and policy developments have also contributed to constructing a sort of community of interests between the Kingdom of Morocco and a number of European actors, including Spain, France, the Council, the Commission and the EEAS.

The background

For decades, repeated interactions on migration matters, in the framework of regional consultative processes (RCPs)¹, have contributed to consolidating the so-called joint management of international migration. Mobilizing decision-makers, stakeholders and practitioners from all countries of migration has been a key objective of these recurrent RCPs, just like their socialization. RCPs have also been conducive to two interrelated (and at times unintended) consequences:

1. The engagement of non-Western countries in migration talks has triggered a (re)construction of their own national interests². Some of them became aware of their empowered position in the “fight against irregular migration” vis-à-vis the West, especially the EU and its Member States.
2. Non-Western countries having a strategic position started to disclose and defend their own representation of what cooperation on migration governance entails, from their point of view.

It is through this double articulation (i.e., empowerment and disclosed representation) that regional consultations on migration governance have evolved since the mid-2000s. In other words, not only have non-Western countries opened communicative channels on migration and asylum with their Western/European counterparts in the framework of RCPs. They have also expressed their own visions as applied to migration governance while capitalising on their empowered position. True, their empowerment has resulted from the emergence of unprecedented patterns of interdependence in the field of migration and border controls. True, also, their empowerment has resulted into the skilful ability to defend their own preferences and contingencies, be they connected with migration matters or not.

¹ Colleen Thouez and Frédérique Channac “Shaping international migration policy: The role of regional consultative processes”, *West European Politics*, 29(2), 2006, pp. 370-387. Randal Hansen, *An Assessment of Principle Regional Consultative Processes on Migration*. IOM Migration Research Series on Migration 38. Geneva: International Organisation for Migration, 2010.

² I draw on the terminology used by Jutta Weldes, “Constructing National Interests”, *European Journal of International Relations* 2 (3), 1996, pp. 275-318.

The precedents

Last year, President Recep Tayyip Erdogan tried to push European governments into supporting Ankara's policy in Syria. When Syria's Idlib province was bombarded by Syrian and Russian forces, Turkey warned the EU that the March 2016 EU-Turkey deal would be in jeopardy lest no additional financial support be provided by the EU. Other demands from Turkey included the creation of an EU-funded buffer zone in Syria aimed at securitizing the border with Turkey, as well as eased access to entry visas for Turkish nationals. More recently, as a retaliation against heightened tensions with the EU which imposed sanctions on the Belarusian regime (following fraudulent elections leading to the re-election of President Alexander Lukashenko and the kidnapping of a dissident Belarusian journalist), the latter threatened the EU that it would no longer prevent migrants from crossing the border with Lithuania where various dissidents and opposition leaders sought and found asylum. Examples abound.

Long before the EU, various Member States have experienced in their bilateral interactions with non-EU countries that the latter are prone to capitalize on crucial issue-areas (e.g., fight against international terrorism, intelligence cooperation, energy security, border controls, to name but a few) to defend their own interests and priorities in the field of migration governance. In other words, not only have some non-EU countries become empowered, but their capacity to use their own leverage on their European counterparts has also been a common practice, though subtly performed. The instrumentalization of migration for political and diplomatic purposes is not uncommon in the history of international relations, nor is it new in the governance of migration. There is a well-documented academic literature on this matter³.

³ Among many others, see Emanuela Paoletti, *The Migration of Power and North-South Inequalities: The Case of Italy and Libya*, New York, Palgrave Macmillan, 2011; Michael Collyer, "Geopolitics as a migration governance strategy: European Union bilateral relations with Southern Mediterranean countries", *Journal of Ethnic and Migration Studies* 42(4), 2016, pp. 606-624; Paolo Cuttitta, "Non-governmental/Civil Society Organisations and the European Union-Externalisation of Migration Management in Tunisia and Egypt", *Population, Space and Place*, vol. 26, n° 7, October 2020; Lemberg-Pedersen Martin, "Manufacturing displacement. Externalization and postcoloniality in European migration control", *Global Affairs* 5(3), 2019, pp. 247-271; Ahmet İçduygu et Damla B. Aksel, "Two-to-Tango in Migration Diplomacy: Negotiating Readmission Agreement between the EU and Turkey", *European Journal of Migration and Law*, vol. 16, n° 3, October 2014; Sarah Wolff, "The Politics of Negotiating EU Readmission Agreements: Insights from Morocco and Turkey", *European Journal of Migration and Law*, vol. 16, n° 1, 2014; Nora El Qadim, *Le gouvernement asymétrique des migrations: Maroc/Union européenne*, Paris, Dalloz, 2015.

Invariably, this empowerment generated additional uncertainties to which the EU and its Member States have been obliged to respond. Their responses converged towards the gradual flexibilization of their patterns of cooperation on migration governance with non-EU countries⁴. Actually, heightened uncertainties in their bilateral cooperation on migration governance explain the perceptible drive for informalization in migration governance, given its lower costs and also because it allowed “adjustment in the face of international uncertainty without dismantling cooperation”⁵. A modicum of cooperation, be it effective or not, had to be preserved at all costs.

To date, patterns of interdependence have developed despite the contrasting vested interests or the asymmetric costs and benefits that have constantly characterized the so-called “joint management of migration”. The examples mentioned above show that informalization does not necessarily result from the need to make cooperation on migration governance more responsive to uncertainties. Rather, it may also result from the need to *accommodate* empowered third countries’ preferences and exigencies in a context marked by strong patterns of interdependence between EU and non-EU countries. Over the last twenty years, the EU and its Member States have witnessed the ability of some non-EU countries to buttress their own credentials in the field of migration governance with a view to defending their preferences and interests, be they connected with migration matters or not.

Reverse diffusion

Manifestly, both the EU and its Member States have become receptive to forms of reverse diffusion including the claims of their own neighbours. Ironically, those who claimed (and were expected) to act as socializers in the framework of recurrent regional consultative processes on migration and border controls – namely, those who were supposed to lead the consultations, to provide guidelines and to transfer norms values and practices to recipient non-EU countries – have turned out to be constrained by the expectations and reverse conditionalities⁶ of the latter.

⁴ Jean-Pierre Cassarino, “Informalising Readmission in the EU Neighbourhood”, *The International Spectator*, 42 (2), 2007, pp. 179-196.

⁵ Barbara Koremenos, “Contracting Around International Uncertainty”, *American Political Science Review* 99 (4), 2005, p. 561.

⁶ For more details on the notions of reverse diffusion and reverse conditionalities, see Jean-Pierre Cassarino, “Informalising Readmission in the EU Neighbourhood”, *op. cit.* and also Jean-Pierre

Though understudied in academia, reverse diffusion is perhaps as old as the externalization of migration controls. Empowerment of non-EU countries, reinforced interdependence, reciprocal patterns of socialization, and reverse conditionalities all intersect to delimit a complex international system where diffusion is far from being unidirectional.

These considerations are important to realise the various consequences stemming from the empowerment of strategic non-EU countries and from the implicit inclination of European countries to accommodate non-EU countries' exigencies and claims. The massive border-crossing that took place in May 2021 at the Spanish enclave of Ceuta is no exception.

Ceuta: Beyond blackmailing

To properly understand the various factors that have been conducive to diplomatic tensions between Spain and Morocco, following the mass arrival of migrants crossing the border of the Ceuta enclave in May 2021, we need to go beyond the mere reference to "blackmailing". This reference is a poor guide to understanding what lies behind Morocco's motivations and expectations with regard to the EU and its Member States (especially Spain and France).

Given its strategic position, Morocco epitomises empowerment and reverse diffusion. Any concession made to the EU, in the field of migration governance, has always been accompanied by a *do ut des* and by reverse conditionalities. For example, when Morocco signed in June 2013 a mobility partnership (MP) with the EU⁷, its decision was inseparable from the attempt to legitimize its *de facto* presence in Western Sahara. Morocco skilfully linked the negotiations of its MP with the prior conclusion in March 2012 of an exchange of letters between the European Union and the Kingdom of Morocco concerning reciprocal liberalisation measures on agricultural products, processed agricultural products, fish and fishery products (henceforth Fisheries Partnership Agreement – FPA).

Cassarino, "Beyond the criminalisation of migration: A non-western perspective", *International Journal of Migration and Border Studies* 4(4), 2018, pp. 397–411.

⁷ On mobility partnerships, see Roderick Parkes "EU Mobility Partnerships: A Model for Policy Coordination?", *European Journal of Migration and Law*, 11 (4), 2009, pp. 327-345. Natasja Reslow, "The Role of Third Countries in EU Migration Policy: The Mobility Partnerships", *European Journal of Migration and Law*, 14 (4), 2012, pp. 393-415.

The FPA raised a lot of controversies in the EU, owing to its geographical scope covering the territory and waters off the coasts of Western Sahara. The Popular Front for the Liberation of Saguia el-Hamra and Río de Oro (henceforth Polisario Front) brought a legal action to the Court of Justice of the European Union (CJEU), in November 2012, against the Council of the European Union for “breaching the right to self-determination of the Sahrawi people and [for] encouraging the policy of annexation followed by the Kingdom of Morocco”⁸.

It is important to highlight that the signature of the MP with Morocco preceded the final judgement of the CJEU regarding the FPA and its compliance with international law. These chronological developments speak volumes about the guarantees that were offered at that time to Morocco regarding the seamless implementation of the FPA despite the legal action brought by the Polisario Front. In February 2019, after years of legal disputes at the CJEU, the FPA entered into force⁹ with the full support of the European External Action Service, the European Commission and the approval of European Parliament. Moreover, bilateral relations between Spain and Morocco were quickly reinvigorated, following the official visits of King Felipe VI and King Mohammed VI to Rabat and Madrid respectively, and the conclusion of eleven cross-sectoral bilateral agreements¹⁰.

A community of interests

Importantly, years of legal disputes opposing the Council of the European Union with the Polisario Front have “shed light on the European Union’s paradoxical position on the conflict in Western Sahara [where] economic and geopolitical interests prevail over the application of European and international law”¹¹. Such legal and policy

⁸ Official Journal of the European Union, Action brought on 19th November 2012 - Front Polisario vs. Council. Case T-512/12 (2013/C 55/26), p. C55/14.

⁹ This is not the place to delve into the technical and legal details of this controversial ruling by the CJEU. Ángela Suárez-Collado and Davide Contini argue that “the Court used a counterfactual legal analysis that did not take into account the practice of the agreement, but rather the theory on which it was based”, see Ángela Suárez-Collado and Davide Contini (2021) “The European Court of Justice on the EU-Morocco agricultural and fisheries agreements: an analysis of the legal proceedings and consequences for the actors involved”, *The Journal of North African Studies*, doi: 10.1080/13629387.2021.1917122

¹⁰ Miguel González and Francisco Peregil, “Felipe VI pide a Mohamed VI ir “más allá” en el control de la emigración”, *El País*, 13 February 2019.

¹¹ Suárez-Collado and Davide Contini, op. cit. p. 16.

developments have also contributed to constructing a sort of community of interests between the Kingdom of Morocco and a number of European actors, including Spain, France, the Council, the Commission and the EEAS.

It is against this background that the massive border crossing, dated May 2021, between Morocco and the Spanish enclave of Ceuta has to be understood. Reportedly facilitated by the Moroccan border police, thousands of migrants crossed the border. Morocco was accused of “blackmailing” Spain for having accepted the hospitalisation of the Polisario Front leader Brahim Ghali on its territory.

However, behind the public and media coverage of the Ceuta case lies another highly sensitive factor that risks to create additional tensions between Morocco and the EU. Soon, the CJEU will have to pronounce itself on another legal action brought by the Polisario Front following the entry into force of the February 2019 FPA. This action was brought in June 2020 against the Council of the European Union¹². Among many other pleas, it is aimed at denouncing the Council decision of 28th January 2019, related to the entry into force of the FPA, which, in the opinion of the applicant, “denies the existence of the Sahrawi people by using the expression ‘the people concerned’ [and] organises, without the consent of the Sahrawi people, the exploitation of its resources”. By all accounts, the FPA-Western Sahara saga is far from being over. There is no question that Morocco is adamant about showing to its European counterparts that it remains vigilant on this pending case. It is under this light that the Ceuta case can be read. Moreover, Morocco expects that the community of interests (unimpaired by the recent Ceuta events) will bear its fruits again.

What happened in Ceuta, a few months ago, generates an unsettling sense of déjà-vu more than a surprise. Indeed, third countries’ intentions to exert pressure on their European counterparts by using the migration variable are not uncommon. Rather, what is unprecedented is the explicitness of their intentions to instrumentalize migration. Perhaps, explicitness is the only new element that characterizes today the ability of non-EU countries to exert their own leverage in migration management matters with a view to shaping the behaviour of their European counterparts. This form of explicit reprisal against an EU Member State might set a precedent, provided the community of interests detailed above will prevail.

¹² Action brought on 23rd June 2020 –Polisario Front v Council. (Case T-393/20).

To cite this contribution: J-P CASSARINO, *An unsettling sense of déjà-vu: The May 2021 Ceuta events and their precedents*, ADiM Blog, Analyses & Opinions, July 2021.